

**THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION**

C.C. PRINE AND JAL-YAMS, INC.	* CIVIL ACTION NO. 06-0966
VERSUS	* JUDGE JAMES
BASF CORPORATION, ET AL.	* MAGISTRATE JUDGE HAYES

REPORT AND RECOMMENDATION

Before the undersigned Magistrate Judge, on reference from the District Court, is a Motion to Dismiss filed by defendants Michael McKenzie (“McKenzie”) and Lance Cone (“Cone”) (Document No. 27). Plaintiffs C.C. Prine (“Prine”) and Jal-Yams, Inc. (“Jal-Yams”) (collectively “Plaintiffs”) oppose the motion. For the reasons stated below, the undersigned recommends that the Motion to Dismiss be **GRANTED**.

STATEMENT OF FACTS

On August 7, 2006, the undersigned issued a memorandum ruling [Document No. 26], which is incorporated by reference herein, denying Plaintiff’s motion to remand based on the finding that Plaintiffs had demonstrated no reasonable possibility of recovering from the non-diverse defendants, McKenzie and Cone, and therefore that they had been improperly joined. The delays for appealing that ruling have long since passed, and no appeal has been filed; therefore, that ruling is now final. In light of that finding, it is recommended that the Motion to Dismiss be **GRANTED** and that Plaintiff’s claims against McKenzie and Cone be **DISMISSED** with prejudice and at their cost.

Under the provisions of 28 U.S.C. §636(b)(1)(C) and FRCP Rule 72(b), the parties have

ten (10) business days from service of this Report and Recommendation to file specific, written objections with the Clerk of Court. A party may respond to another party's objections within **ten (10) business days** after being served with a copy thereof. A courtesy copy of any objection or response or request for extension of time shall be furnished to the District Judge at the time of filing. Timely objections will be considered by the District Judge before he makes a final ruling.

A PARTY'S FAILURE TO FILE WRITTEN OBJECTIONS TO THE PROPOSED FINDINGS, CONCLUSIONS AND RECOMMENDATIONS CONTAINED IN THIS REPORT WITHIN TEN (10) BUSINESS DAYS FROM THE DATE OF ITS SERVICE SHALL BAR AN AGGRIEVED PARTY, EXCEPT ON GROUNDS OF PLAIN ERROR, FROM ATTACKING ON APPEAL THE UNOBJECTIONED-TO PROPOSED FACTUAL FINDINGS AND LEGAL CONCLUSIONS ACCEPTED BY THE DISTRICT JUDGE.

Thus done and signed at Monroe, Louisiana, this 5th day of December, 2006.



KAREN L. HAYES
U. S. MAGISTRATE JUDGE